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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6353 OF 1996

Maharashtra State Warehousing
Corporation, Plot B, Survey NO.523
Gultekadi, Market Yard, Pune ... Petitioner

V/s.

1. Suhas Vaman Bapat
residing at 134/2, Shukrawar Peth, Pune

2. S.S. Hirukar,
Member, Industrial Court
Pune, PMT Building No.1, Swargate
Pune ... Respondents

Mr.P. Ramaswamy for Petitioner
Mr.K.S. Bapat for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 17, 2007**

ORAL JUDGMENT:

. The Petition challenges the order of the Industrial Court passed in revision (ULP) No.67 of 1995. The Industrial Court has reversed the findings of the Labour Court in Complaint (ULP) No.85 of 1988 and has held that the petitioner has committed an unfair labour practice under Item 1(b), (d), (f) and (g) of Schedule IV of the MRTU & PULP Act. The Industrial Court has granted reinstatement to the respondent workman with continuity of service and backwages for the period of forced unemployment.

2. Undisputedly, after the order of the Industrial

Court, the respondent workman was reinstated in service. The workman has been reinstated soon after some time in April 1997. The question, therefore, in the petition is restricted to the payment of backwgaes.

3. The facts in the present petition are as follows:

The Petitioner had appointed the respondent in service from 1976. A chargesheet was issued to him on 11.9.1984 for gross negligence of work, insubordination as well as repeated incidents of arrogant behaviour with superior officers. Besides this, he was also chargesheeted for remaining absent on false grounds. An enquiry was instituted against the respondent since his reply was found unsatisfactory by the petitioner. The respondent workman participated in the enquiry. The enquiry report was furnished to the respondent workman and he was directed to show cause as to why he should not be dismissed from service. It appears that the reply tendered by the respondent workman was not to the satisfaction of the petitioner and therefore, his services were terminated on 6.2.1988 by way of dismissal.

3. Respondent No.1 filed complaint (ULP) No.85 of 1988 under Item 1 (a), (c), (d) and (f) of Schedule IV

of the MRTU & PULP Act. The Labour Court found that the enquiry held against the respondent was fair and proper and that the findings of the enquiry officer were not perverse. The complaint was then heard on the aspect of the relief to be granted to Respondent No.1. The Labour Court concluded that since the misconduct was established, there was no question of there being any unfair labour practice on the part of the petitioner. The Labour Court concluded that there was no unfair labour practice under Item 1 (a), (c), (d) and (f) of Schedule IV on the part of the petitioner. As regards Item 1(g), the Labour Court held that the respondent had not pleaded that the punishment was disproportionate and, therefore, dismissed the complaint.

4. Being aggrieved by the order of the Labour Court, the respondent workman preferred a revision application (ULP) No.67 of 1995. The revision application was allowed by the Industrial Court. It held that the Labour Court after concluding that the misconduct had been proved ought to have considered the quantum of punishment imposed on the respondent. The Industrial Court has held that the punishment was to0 severe for the acts of misconduct allegedly committed by the respondent workman and therefore, interfered with the punishment. The Industrial Court concluded that the findings of the enquiry officer were perverse and that

therefore the workman was entitled to reinstatement with continuity of service and full backwages. As regards the backwages, the Industrial Court has held that there was nothing on record to show that the respondent workman was gainfully employed elsewhere during the course of his forced unemployment and on this basis, he awarded full backwages to the respondent workman.

5. Mr.Ramaswamy, appearing for the petitioner, takes exception to the order passed by the Industrial Court as regards backwages. He submits that the petitioner has already reinstated the workman who has now retired from service. According to the learned Counsel, in such circumstances, the issue which remains is whether the workman is entitled to backwages for the period from 6.2.1988 till he was reinstated after the receipt of the letter dated 23.4.1997. The learned counsel points out that there is no pleading in the complaint that the respondent workman was unemployed after his services were terminated with the petitioner. He submits that it is necessary for the workman to prove that he is not employed during the period of forced unemployment. He further submits that there is no discussion at all by the Industrial Court as to why he has awarded backwages to the respondent workman when there is no pleading to that regard nor is there any discussion in the impugned judgment regarding the

deposition in respect of the backwages. He submits that the onus of proving unemployment lies on the respondent workman and unless he discharges this burden the onus does not shift on the employer to prove gainful employment.

6. Mr.Bapat, appearing for the respondent workman, submits that the workman filed a complaint within two months of his dismissal and therefore, it was highly improbable that he could have been employed within these two months in any other establishment. He submits that the evidence on record indicates that the workman has remained unemployed from 1988 till 1997 when he was reinstated in service. The learned advocate also submits that the Industrial Court has considered the fact that on reinstatement the workman would be entitled to backwages. He also points out that it is not necessary that in every case a pleading should be on record by the workman that he is unemployed. The Court can consider the evidence on record without there being a pleading while concluding whether the workman is gainfully employed, submits the learned advocate.

7. On perusal of the order of the Industrial Court, I am of the view that the order regarding backwages cannot be sustained. There is no discussion in the impugned order as to why backwages are being awarded

except to say that it is the consequential relief which is to be granted on reinstatement of a workman. It is trite that the workman must plead that he is unemployed and that he must discharge the burden which is primarily cast on him to prove unemployment after dismissal from the services. It is only after the workman pleads and proves that he is unemployed that the onus would shift to the employer to prove the gainful employment of the workman. In the present case, there is no discussion at all by the Industrial Court as to whether the initial burden has been discharged by the workman in order to shift the onus on to the employer i.e. the petitioner herein.

8. In such circumstances, the order of the Industrial Court is set aside to the extent that it awards backwages to the respondent workman. I am of the view that it would be appropriate to remand the revision application to the Industrial Court to decide the issue as to whether the Respondent workman is entitled to receive backwages and if so what should be the quantum. Although evidence would not normally be recorded in a revision application u/s 44, in the circumstances of the present case, the parties are at liberty to lead evidence before the Industrial Court on the aforesaid issue. The Industrial Court to decide whether the respondent workman is entitled to backwages on the basis

of the pleadings on record and the evidence which has already been led as well as any further evidence which the parties may lead. This exercise to be completed within a period of three months from today. The parties to appear before the Industrial Court on 19.11.2007.

9. Rule accordingly made absolute partly. No order as to costs.